IN THE HIGH COURT OF URRARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ Petition No. 328 of 2004 (S/B)

Date of decision: 19th July, 2005

A.F.R. (Approved for Reporting)

Not Approved for Reporting

Date Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 328 of 2004 (S/B)

S.K. Sharma S/o Chandra Prakash,
R/o House No. 40,
Vivekanand Hydle Colony,
Nirala Nagar, Lucknow (U.P.). ……. Petitioner

Versus

1. State of Uttaranchal,
through Secretary, Pey Jal,
Civil Secretariat, Uttaranchal, Dehradun.
2. Uttaranchal Power Corporation Ltd.,
Uttaranchal, Dehradun
Through its Chairman / Managing Director.
3. Principal Secretary,
Uttaranchal Power Corporation Ltd.,
Uttaranchal, Dehradun.
4. Mr. B.M. Verma,
Joint Managing Director,
Uttaranchal Power Corporation Ltd.,
Uttaranchal, Dehradun. …… Respondents

Mr. Ram Ji Srivastava, Advocate for the petitioner.
Mr. K.P. Upadhyaya, Standing Counsel for the State of Uttaranchal.
Mr. S. Dhulia, Senior Advocate assisted by Mr. Vipul Sharma, Advocate for respondents Nos. 2 and 3.
Mr. L.P. Naithani, Senior Advocate assisted by Mr. Rakesh Thapliyal, Advocate for respondent No. 4.

Coram: Hon. Cyriac Joseph, C.J.
Hon. B.C. Kandpal, J.

ORAL JUDGMENT:(Per Hon'ble the Chief Justice)

1. As per Annexure 1 advertisement, applications were invited for the posts of (1) Chairman and Managing Director / Managing Director, (2) Director Finance – Distribution / Trading, (3) director Distribution / Operation, (4) Managing Director – Transmission and (5) Executive Director (Transmission) – Transmission Company, in the Uttaranchal Power Corporation Ltd. The petitioner Sri S.K. Sharma applied for the post of Director Distribution / Operation. He was called for interview and he participated in the interview. However, he was not selected or appointed. On the other hand, the fourth respondent Sri B.M. Verma who had not applied for the post of Director, Distribution / Operation was appointed as Joint Managing Director against the post of Director, Distribution / Operation.

Aggrieved by the denied of appointment to the petitioner, he has filed this writ petition praying for the following reliefs:

> "i. issue a writ, order or direction in the nature of Certiorari calling for the records and quashing the impugned appointment letter no. 438/1/2004/06II/35/2001 dt. 20.8.2004 of respondent no. 4, issued by the Up Sachiv, Urja Vibhag, Government of Uttaranchal, Dehradun.
>
> ii. issue a writ, order or direction in the nature of Mandamus commanding the respondent authorities to give the appointment to the petitioner on the post of Director Distribution / Operation in Uttaranchal Power Corporation Ltd. in pursuance of the advertisement (Annexure No. 1 to this writ petition).
>
> iii. pass any other and further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.
>
> iv. award the cost of writ petition to the petitioner."

2. Separate counter affidavits have been filed on behalf of respondents Nos. 1 and 4, disputing the claim of the petitioner and objecting to the prayers in the writ petition. The petitioner has filed separate rejoinder affidavits in reply to the said counter affidavits.

3. We have heard Mr. Ram Ji Srivastava, learned counsel for the petitioner, Mr. K.P. Upadhyaya, learned Standing Counsel for the State of Uttaranchal, Mr. S. Dhulia, learned senior counsel for respondents Nos. 2 and 3 and Mr. L.P. Naithani, learned senior counsel for respondent No. 4.

4. The respondents have admitted that the petitioner had applied for the post of Director, Distribution / Operation and that he was called for interview. But it is categorically stated that, though four candidates including the petitioner were considered by the Interview Board, none of them was found suitable for selection and therefore, the Interview Board did not recommend any of them for appointment to the post of Director, Distribution / Operation. The petitioner has not made any allegation of bias or malafides or incompetence against the members of the Interview Board. In the absence of any such

allegation of bias or malafides or incompetence against the members of the Interview Board, the decision taken by the Interview Board with regard to the suitability of the candidates cannot be subjected to judicial review. Hence, the decision of the Interview Board that all the four candidates including the petitioner were not suitable for appointment to the post of Director, Distribution / Operation, is not liable to be interfered with by this Court under Article 226 of the Constitution of India. Therefore, the prayer of the petitioner for a direction to the respondents to appoint him as Director, Distribution / Operation in Uttaranchal Power Corporation Ltd. is liable to be rejected.

5. Coming to the challenge against the appointment of the fourth respondent as Joint Managing Director against the post Director, Distribution / Operation, it is to be noted that the fourth respondent Sri B.M. Verma had admittedly applied for the post of Chairman and Managing Director. Though another person stated to be senor to him was selected for the post of Chairman and Managing Director, the Interview Board recommended the name of the fourth respondent for the post of Director, Distribution / Operation. It is stated that the same Interview Board conducted the interviews for the posts of Managing Director and Director, Distribution / Operation. When the Interview Board found that none of the applicants for the post of Director, Distribution / Operation was suitable for selection, they found that the fourth respondent was suitable for appointment against the post of Director, Distribution / Operation and hence they recommended that the fourth respondent may be appointed as Joint Managing Director against the post of Director, Distribution / Operation. On the basis of the said recommendation the fourth respondent was appointed. We do not find any illegality in the said selection and appointment of the fourth respondent.

6. The contention of the learned counsel for the petitioner is that the post of Joint Managing Director was not advertised and therefore, the fourth respondent could not have been appointed as Joint Managing Director. There is no merit in this contention. The fourth

respondent is appointed against the post of Director, Distribution / Operation with the designation of Joint Managing Director. It is not disputed that applications were invited for the post of Director, Distribution / Operation. None of the candidates applied for the post of Director, Distribution / Operation was found suitable by the Interview Board. The fourth respondent had applied for the higher post of Managing Director. Though he was not selected for the post of Managing Director, the Interview Board found him suitable for appointment as Joint Managing Director against the post of Director, Distribution / Operation. The mere fact that the fourth respondent had not applied for the post of Director, Distribution / Operation, did not stand in the way of the first respondent making such appointment. Since the fourth respondent is appointed against the post of Director, Distribution / Operation and is only given the designation of Joint Managing Director, the omission to advertise the post of Joint Managing Director does not vitiate the appointment. In such circumstances, there was nothing wrong or illegal in selecting and appointing the fourth respondent against the post of Director, Distribution / Operation with the designation of Joint Managing Director. The petitioner has also not pointed out any violation of any rules with regard to the impugned appointment. When there is no violation of any rules, the Court need only examine whether the process of selection and appointment is vitiated by any arbitrariness or malafides. In the circumstances stated above, it cannot be said that the process of selection and appointment of the fourth respondent was, in any way, arbitrary. The petitioner has not placed on record any material to show that the process of selection and appointment was vitiated by malafides. It is also clear that in the given circumstances, the Government was constrained to appoint the fourth respondent in the best interest of the Corporation. Hence we do not find any valid reason to interfere with the appointment of the fourth respondent.

7. For the reasons stated above, the writ petition is devoid of merit and it is dismissed.

(B.C. Kandpal, J.) **(Cyriac Joseph, C.J.)**
19.07.2005 **19.07.2005**

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